IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Heller et al.	Attorney Docket No.: 101-P288/P3054US1
Application No.: 10/622,017	Examiner: Meucci, Michael D.
Filed: July 16, 2003	Group: 2142
Title: METHOD AND SYSTEM FOR DATA SHARING BETWEEN APPLICATION PROGRAMS	Confirmation No. 1693

PRE-APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicants appeal the rejection of claims in the final Office Action dated October 15, 2008. Applicants request careful consideration of this Pre-Appeal Brief in advance of Applicant's submission of a formal appeal brief.

A. Introduction

Claims 1-6, 8-10 and 12-42 are pending. In the final Office Action, the Examiner rejected claims 1-6, 8-10 and 12-42 under 35 U.S.C. § 103(a). These rejections should be withdrawn for at least the reasons noted below.

B. Rejection of Claims 1-6, 8-10 and 12-42 under 35 USC 103

Claims 1-6, 8, 9, 12, 13, 15-19, 21-23, 25-31 and 33-42 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Lysenko et al. (US 7,089,319) in view of Levy (US 2002/0052885). Applicants respectfully disagree.

Claim 1 is pertains to sharing media data between different applications. A first application that uses media information about one or more media content files in a proprietary format to produce a data communication file. The data in the data communication file is derived from the media information such that data internal to the

data communication file is acquired from the media information. Thereafter, another different application, a second application program, can access the data communication file to produce a user interface on the display using data internal to the data communication file.

1. Data Communication File – Not Taught or Suggested

Lysenko can share multimedia files between users. However, in Lysenko, the multimedia files themselves are shared. In contrast, in claim 1, the media content file has a proprietary format and is not being shared; instead, a data communication file is produced and used to inform another application of information concerning the media content in the media content file. Lysenko fails to teach or suggest a data communication file or any use thereof.

More specifically, claim 1, among other things, recites:

> (b) accessing, by a second application program, a data communication file provided by the first application program, the first application program utilizing media information about one or more media content files in a proprietary format, and the data communication file being derived from the media information such that data internal to the data communication file is acquired from the media information;

As to this limitation of claim 1, the Examiner references column 3, lines 26-30 of Lysenko. This referenced portion of Lysenko merely discusses that there are proprietary multimedia file types that are not always compatible with a generic web browsing application, and that as a result file sharing is complicated because additional third-party software (e.g., plug-ins, players) are needed in order view files of proprietary multimedia file types. Hence, Lysenko is merely concerned with sharing multimedia files. The fact that Lysenko mentions proprietary multimedia file types is not sufficient to teach or suggest a data communication file having data derived from media information about one or more media content files in a proprietary format as recited in claim 1.

The Examiner has unreasonably broadly construed claim 1 to maintain an unsupported rejection. Claim 1 recites more than sharing proprietary multimedia files. The proprietary media files being shared in Lysenko require additional third-party software. In contrast, the method of claim 1 uses a data communication file that is

provided as an intermediary such that there is no need for additional third-party software to access proprietary information (e.g., media information about one or more media content files having a proprietary format). Hence, if anything, Lysenko actually teaches that to make use of proprietary media files one skilled in the art would be required to access additional third-party software to read the proprietary media files.

Therefore, Lysenko fails to teach or suggest a data communication file as recited in claim 1.

2. User Interface Produced using Data from Data Communication File is Not taught or Suggested

Furthermore, claim 1 also recites producing a user interface using the data internal to the data communication file. In the final Office Action, the Examiner references column 3, lines 39-43 of Lysenko. However, Applicants respectfully submit that this portion of Lysenko merely mentions that multimedia applications are resource-intensive and conventionally require proprietary and high-bandwidth networks. As such, Applicants respectfully submit that Lysenko has nothing to do with "producing, by the second application program, a user interface on the display using data internal to the data communication file" (claim 1, lines 11-12).

Still further, since the subsequent operations (d), (e) and (f) of claim 1 are dependent on a user selection with respect to the user interface produced using the data internal to the data communication file, these operations are also not taught or suggested by Lysenko.

3. Levy Cannot Overcome Lysenko's Deficiencies

Levy pertains to peer-to-peer file sharing using data embedded into a file or content to combat piracy. Notwithstanding, Levy fails to teach or suggest any of the above-noted deficiencies of Lysenko. Hence, even if one skilled in the art were to combine Lysenko with Levy as the Examiner proposes, the combination of references would still fail to teach or suggest various limitations of claim 1, including those noted above.

4. Conclusion

Based on the foregoing, it is submitted that claim 1 is patentably distinct from

Lysenko alone or in combination with Levy. Claims 15 and 27 are other independent claims directed at sharing media data between computer programs. These claims also make use of a data communication file. As noted above, neither Lysenko nor Levy provides any teaching or suggestion for a data communication file suitable to facilitate sharing media data between applications (or application programs). Therefore, it is submitted that claims 15 and 27 are also patentably distinct from Lysenko alone or in combination with Levy.

Dependent claims 2-6, 8-10, 12-14, 16-26, and 28-42 are also patentably distinct from the cited references for at least the same reasons as those recited above for the independent claim, upon which they ultimately depend. These dependent claims recite additional limitations that further distinguish these dependent claims from the cited references. For at least these reasons, these claims are patentable distinct over Lysenko in view of Levy.

C. Rejection of Claims 10, 14, 20, 24 and 32 is Unsupported by Cited References

The Examiner rejected dependent claims 10, 20, and 32 under 35 USC § 103(a) as being unpatentable over Lysenko in view of Levy and further in view of Book et al. (US 2003/0223566); and rejected dependent claims 14 and 24 under 35 USC § 103(a) as being unpatentable over Lysenko in view of Perkes et al. (US 2002/0194601). Applicants also respectfully disagree with these rejections.

Neither Book et al. nor Perkes et al. overcome the deficiencies of Lysenko and Levy regarding the exchange of media information as discussed above. Thus, it is submitted that dependent claims 10, 14, 20, 24, and 32 are patentably distinct from the cited references for at least the same reasons as those recited above for the independent claims upon which they ultimately depend. Moreover, these dependent claims recite additional limitations that further distinguish these dependent claims from the cited references.

For example, claims 10, 20 and 32 recite that the data communication file is an XML document, which is a type of markup language document. Lysenko and Levy lack any teaching or suggestion for a data communication file as recited in claim 1. Hence,

the Examiner relies on Book et al. While Book et al. notes the XML can be used with a web page, the data communication file is not a web page, but a means to provide media information from proprietary media files to another application. Hence, Lysenko, Levy and Book et al. are all deficient and there is no reasonable motivation to combine these references as the Examiner proposes.

D. Claims 41 and 42 - No Basis for Rejection

Claim 41 recites that "the data communication file is automatically produced by the first application program" and claim 42 recites that "the first application program automatically updates the data communication file when the media information utilized by the first application program changes." In the Office Action, dependent claims 41 and 42 were rejected as obvious from Lysenko, specifically, col. 8, lines 23-35 of Lysenko. However, Applicants find no basis to support the Examiner's rejection. Lysenko merely indicates that a dynamically mapped resource locator server 400 can be connected to the Internet and continuously update its back-end video channel database 410. The dynamically mapped resource locator server 400 of Lysenko is not a data communication file, nor does it teach or suggest automatically producing or automatically updating a data communication file. As such, there is no reasonable basis for the rejection of claims 41 and 42.

E. Conclusion

For at least the above-notes reasons, It is submitted that claims 1-6, 8-10 and 12-42 are patentably distinct from the cited references. Applicants respectfully request that the rejections under 35 USC § 103(a) be withdrawn.

Respectfully submitted,

/C. Douglass Thomas/

C. Douglass Thomas
Reg. No. 32,947
Technology & Innovation Law Group, PC
19200 Stevens Creek Blvd., Suite 240
Cupertino, CA 95014
408-252-9991